

Notice of Allowability

Application No.

10/811,483

Examiner

Kent L. Bell

Applicant(s)

WHILEY ET AL.

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 8/15/06
2. ☒ The allowed claim(s) is/are THE CLAIM
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Detailed Action

Reasons for Allowance

The specification is as complete as is reasonably possible. In view of Applicant's statements in the Remarks section, pages 3-6, of Applicant's response filed August 15, 2006, that the instant plant was not publicly available at least more than one year prior to the filing of the instant U.S. Plant Patent application that only the instant plant's fruit was available the USC 102(b) rejection cannot be maintained.

The instant plant only produces monoembryonic seeds, meaning the seeds produce only one seedling for each seed that is always genetically different from the parents, i.e. the instant cultivar (Species Profiles for Pacific Island Agroforestry, www.traditionaltree.org, page 11, col.1, lines 5-26). Therefore, growing or tissue culturing the monoembryonic seed will not result in the instant plant. Mango is generally recalcitrant to tissue culturing and as a result, it would appear that tissue culturing of the instant variety would be difficult without undue experimentation. (Direct Somatic Embryogenesis Induced From Cotyledons of Mango Immature Zygotic Embryos, Page 196, Col. 1, lines 1-22, and Col. 2, lines 1-8) and (Somatic Embryogenesis And Plantlet Regeneration In Amrapali And Chausa Cultivar Of Mango (*Mangifera indica* L.), Page 1, Paragraph 1).

Even if the instant variety was not recalcitrant, there is no evidence that tissue culturing of fruit would recapitulate the instant plant. Also, through various searches conducted there is no art to indicate that Mango fruit having monoembryonic seeds can be tissue cultured to reproduce

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the exact, identical instant plant. Therefore, as stated above, a proper rejection under 35 USC 102(b) cannot be maintained.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

